In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 939

ROBERT L. WAGNER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was one of numerous individuals and corporations charged in the District of Oregon in two counts with separate conspiracies arising out of fraudulent transactions in real estate. In essence the first count charged a conspiracy to violate the "private" fraud provisions of 15 U.S.C. 77q(a) (Securities Act) and 18 U.S.C. 1341 (Mail Fraud). The other conspiracy charged violation of 18 U.S.C. 1001 and 2314, designed to prevent fraud upon agencies of the government and to punish interstate transportation of the fruits of the illicit scheme. Petitioner was acquitted of the latter conspiracy by the jury but convicted of the former. The court of appeals affirmed (Pet. App.).

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Petitioner contends that he was prejudiced by having the case go to the jury on the latter conspiracy (despite his acquittal) because of the speculative possibility that the jury's verdict of guilty on the first count might have been the result of an improper compromise. He argues that the evidence was insufficient to justify sending the case to the jury on the latter conspiracy and that in reality the two alleged conspiracies were one and should have been charged as different overt acts within the same count. The argument leads nowhere. On the hypothesis supposed the evidence as to the second conspiracy alleged would have been admissible in connection with the evidence as to the first. There was ample evidence of a fraud on the public in the real estate transactions. Petitioner is in no positon to complain that the jury did not also find him involved in the fraud against the government.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1970.

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